

Xu (Migration) [2022] AATA 820 (1 April 2022)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Mr Fangwu Xu Ms Nini Ding Mr Yang Xu
REPRESENTATIVE:	Mr Liang Lu (MARN: 0848726)
CASE NUMBER:	2110485
HOME AFFAIRS REFERENCE(S):	BCC2019/4944328
MEMBER:	P. Maishman
DATE:	1 April 2022
PLACE OF DECISION:	Perth
DECISION:	The Tribunal affirms the decision to cancel the first named applicant's Subclass 187 – Regional Sponsored Migration Scheme visa. The Tribunal has no jurisdiction with respect to the other applicants.

Statement made on 01 April 2022 at 3:34pm

CATCHWORDS

MIGRATION – cancellation – Regional Employer Nomination (Permanent) (Class RN) visa – Subclass 187 (Regional Sponsored Migration Scheme) – incorrect answers and bogus documents given with visa application – English language test and report – comparison of facial photographs – discretion to cancel visa – non-registered agent arranged for another person to do test – late concession of non-compliance – no other evidence of competent English – established life in Australia – value of skilled trade work to employer – hardship if visa cancelled and COVID-19 travel restrictions – members of family unit – consequential cancellation of visas with no jurisdiction to review – decision under review affirmed

LEGISLATION

*Migration Act 1958 (Cth), ss 5(1)(a), 101(b), 103, 107, 109(1), 140(1)
Migration Regulations 1994 (Cth), r 2.41, Schedule 2, cl 187.232*

CASES

Hu (Migration) [2021] AATA 2941

MIAC v Khadgi (2010) 190 FCR 248

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Home Affairs to cancel the first named applicant's Subclass 187 – Regional Sponsored Migration Scheme (RSMS) visa under s 109(1) of the *Migration Act 1958* (Cth) (the Act).
2. The delegate cancelled the visa on the basis that the applicant provided incorrect answers and bogus documents to the Department when applying for the visa. The issue in the present case is whether that ground for cancellation is made out, and if so, whether the visa should be cancelled.
3. For the purposes of the Tribunal's jurisdiction, the only decision that is before the Tribunal is that with respect to the first named applicant (the applicant). The other visas were automatically cancelled as a consequence of that cancellation, not by a decision but by force of the operation of s 140(1) of the Act. As no decision was involved in the visa cancellation under s 140(1), the Tribunal has no jurisdiction with respect to the other applicants.
4. The applicants appeared before the Tribunal on 21 February 2022 to give evidence and present arguments.
5. The applicant provided a list of witnesses to give oral evidence in support of the applicant's character. Each of the witnesses provided letters of support which the Tribunal accepted on their face. After the hearing the letters were provided in statutory declaration form. The Tribunal accepts the statutory declaration evidence of each of the witnesses and did not require to hear from them individually.
6. The Tribunal hearing was conducted with the assistance of an interpreter in the Mandarin and English languages.
7. The applicants were represented in relation to the review.
8. For the following reasons, the Tribunal has concluded that the decision to cancel the applicant's visa should be affirmed.

CONSIDERATION OF CLAIMS AND EVIDENCE

9. The Tribunal had before it a copy of the Department's file. The file includes the visa application; a copy of an International English Language Testing System (IELTS) test report, TRF 13AU001113XUF106G showing an overall score of 6.5; a copy of the Department's Notice of Intention to Consider Cancellation under Section 109 of the Migration Act 1958 (NOICC) dated and sent to the visa holder on 20 April 2021; and his written email response signed and dated 30 April 2021.
10. The Tribunal received written submissions prepared by the applicant's representative on 14 February 2022; the applicant's statutory declaration dated 12 February 2022; and a number of character references from the applicant's employer, colleagues and neighbours. The applicant provided further statutory declarations and detailed submissions from the applicant's employer after the hearing.
11. Section 109(1) of the Act allows the Minister to cancel a visa if the visa holder has failed to comply with ss 101, 102, 103, 104, 105 or 107(2) of the Act. Broadly speaking, these sections require non-citizens to provide correct information in their visa applications and

passenger cards, not to provide bogus documents and to notify the Department of any incorrect information of which they become aware and of any relevant changes in circumstances.

12. The exercise of the cancellation power under s 109 of the Act is conditional on the Minister issuing a valid notice to the visa holder under s 107 of the Act, providing particulars of the alleged non-compliance. Where a notice is issued that does not comply with the requirements in s 107, the power to cancel the visa does not arise. Extracts of the Act relevant to this case are attached to this decision.
13. The applicant does not dispute the NOICC issued by the delegate was a valid notice.
14. In the present matter, the Tribunal is satisfied that the delegate had reached the necessary state of mind to engage s 107 and that the notice issued under s 107 complied with the statutory requirements.

Was there non-compliance as described in the s 107 notice?

15. The issue before the Tribunal is whether there was non-compliance in the way described in the s 107 notice, being the manner particularised in the notice, and if so, whether the visa should be cancelled.
16. The non-compliance identified and particularised in the s 107 notice dated 20 April 2021 was non-compliance with s 101 (visa applications to be correct) and s 103 of the Act (bogus documents not to be given).
17. The non-compliance identified and particularised in the s 107 notice was non-compliance with s 101(b) in the following respects:
 - a. at page 12 of the visa application dated 28 August 2015, the applicant answered 'Yes' to the question '*Has the applicant undertaken an English language test within the last 36 months?*'; and
 - b. provided details of an IELTS exam purportedly taken by him on 7 December 2013 (reference 13AU001113XUF106G) at the section on the form '*English test Details*'; and
 - c. answered 'Yes' to the declaration to '*Have provided complete and correct information in every detail on this form, and on any attachments to it*'.
18. Further non-compliance identified and particularised in the s 107 notice was non-compliance with s 103 in the following respects:
 - a. in support of his visa application the applicant provided a copy of an IELTS test report dated 19 December 2013, TRF 13AU001113XUF106G. The delegate, relying on comparison of facial photographs, reasonably suspected the document purported to have been but was not issued in respect of the applicant.
19. The delegate reasonably suspected the IELTS report to be a bogus document as defined by s 5(1) of the Act. As the report was provided in support of the RSMS visa application, the applicant appeared to have not complied with his obligations under s 103 of the Act.

20. The applicant responded to the NOICC by email on 30 April 2021. The applicant claimed people's faces changed due to weight changes, stress and age. The applicant claims to remember travelling with friends to New South Wales and finishing the writing, reading, listening and speaking tests.
21. On 12 February 2022 the applicant made a statutory declaration, witnessed by his registered migration agent, agreeing that he provided an incorrect answer regarding the language test on his visa application and that he provided a bogus document in favour of his application.
22. The applicant confirmed at hearing that what was written in the NOICC was correct. The applicant maintained that he travelled from Western Australia to New South Wales to undertake the English test, but did not sit the test. He does not know why he did not sit the test and his Chinese migration agent arranged the person to do the test.
23. On the evidence before it, the Tribunal finds that the information given in the visa application form about the applicant having sat an IELTS test is incorrect. Accordingly, the applicant has not complied with s 101(b) as described in the notice.
24. The Tribunal further finds that the IELTS report provided with the application is a bogus document, as defined in paragraph (a) of that definition in s 5(1) of the Act, because the Tribunal reasonably suspects that the document purports to have been, but was not, issued in respect of the applicant. Accordingly, the applicant has not complied with s 103 as described in the notice.
25. For these reasons, the Tribunal finds that there was non-compliance with s 101 and s 103 by the applicant in the way described in the s 107 notice.

Should the visa be cancelled?

26. As the Tribunal has decided that there was non-compliance in the way described in the notice given to the applicant under s 107 of the Act, it is necessary to consider whether the visa should be cancelled pursuant to s 109(1). Cancellation in this context is discretionary, as there are no mandatory cancellation circumstances prescribed under s 109(2).
27. In exercising this power, the Tribunal must consider the applicant's response (if any) to the s 107 notice about the non-compliance, and have regard to any prescribed circumstances: s 109(1)(b) and (c). The prescribed circumstances are set out in reg 2.41 of the *Migration Regulations 1994* (Cth) (the Regulations).

Prescribed circumstances

The correct information

28. The Tribunal is satisfied that the correct information is that the applicant did not sit an IELTS test on 7 December 2013 and therefore did not obtain the scores listed in the test report issued in his name on 19 December 2013. In the absence of any information that he had demonstrated that he had competent English through sitting another English test, or that he was exempt from having to do so, the Tribunal finds that the applicant was not competent in English at the time that he made his visa application on 28 August 2015.
29. The applicant was unable to communicate with the Tribunal in English and the services of the interpreter of Mandarin were required for the whole hearing.

30. The Tribunal is therefore satisfied that the applicant would not have satisfied the applicable English language requirements at the time he made his visa application on 28 August 2015, had the correct information been taken into account.
31. The Tribunal gives significant weight to this as a factor that weighs strongly in favour of cancellation of the applicant's visa.

The content of the genuine document (if any)

32. The Tribunal has found that the IELTS test result purportedly issued to the applicant on 19 December 2013 is in fact a bogus document. The applicant concedes that the document was bogus. The Tribunal further finds that there is no evidence of the applicant having undertaken any other English test demonstrating that he had competent English prior to making his visa application.
33. The Tribunal considers that if the Department had known that the scores in the IELTS test report submitted with the visa application were achieved by someone other than the applicant, they would not have granted the applicant the visa. This consideration weighs in favour of cancelling the visa.

Whether the decision to grant a visa or immigration clear the visa holder was based, wholly or partly, on incorrect information or a bogus document

34. The Tribunal finds that it was a requirement in cl 187.232 that the applicant have competent English at the time that he made his visa application (or to be exempt from having to do so). There is no evidence before the Tribunal to indicate that the applicant was exempt and it is satisfied that he therefore had to demonstrate that he had competent English at the time that he made his visa application on 28 August 2015. He did so by submitting the IELTS test report purportedly issued in his name on 19 December 2013.
35. The Tribunal has found that this IELTS test report was a bogus document, and the applicant conceded in his statutory declaration dated 12 February 2022 and at hearing that the test was undertaken by someone other than himself, despite the test report purportedly being issued to the applicant.
36. The applicant's representative submitted the grant of the visa was partially based on incorrect information and a bogus document provided by the applicant. The Tribunal asked the representative to clarify his submission the case officer is accountable for failing to identify the incorrect answer or verify the IELTS score. The representative said he meant the technology was not available for the case officer to do so, rather than the case officer being accountable.
37. The Tribunal is satisfied that the decision to grant the applicant a Subclass 187 visa was based at least partly on the incorrect information he provided in his visa application where he asserted that he had competent English for the purposes of cl 187.232, and the bogus document (the IELTS test result issued on 19 December 2013) he provided to support this claim. The Tribunal considers this a significant factor weighing in favour of cancelling the visa.

The circumstances in which the non-compliance occurred

38. The non-compliance occurred when the applicant lodged the RSMS visa application, which included incorrect information and a bogus document.

39. The applicant's representative submits the bogus document was provided because the applicant lacked knowledge of Australian laws. He was misled by a non-registered migration agent in China who advised him to take a short cut. The applicant was concerned he might not meet the English requirement for the visa and accepted the advice. The representative submits the applicant had no intention to deceive the Department.
40. In his statutory declaration dated 12 February 2022 the applicant admits he provided an incorrect answer about his English test and provided a bogus document in favour of his visa application. The applicant declares his third-party broker told him he had a good chance of getting his PR visa approved if he submitted a result showing he met the English competency requirements.
41. The applicant told the Tribunal he travelled by car from WA to NSW with his friend and did not know why he did not sit the English test. His agent told him they would sort it out if he paid. The applicant said he was regretful of giving the wrong answer and the bogus document. The applicant agreed that answers to questions would, in any country, be expected to be correct.
42. The Tribunal does not accept the submission the bogus document was given because the applicant lacked knowledge of Australian laws, or that he had no intention to mislead the Department by doing so. The applicant was concerned he might not meet the English competency requirements for the grant of the visa and took advice his chances of obtaining a visa were better if he submitted the bogus IELTS result. He did not sit the IELTS test as he declared on his application, but declared he was competent in English based on the results. The requirement not to provide a false document or false information is not a law that is peculiar to Australia. The applicant submitted his visa application declaring his understanding that giving false or misleading information was a serious offence; and that his and his family's visa may be cancelled if he, his family members or any third party acting on his behalf provided false or misleading information.
43. The Tribunal is satisfied that the applicant deliberately chose to undertake this course of action in order to obtain a permanent residence visa to which he would otherwise not have been entitled. The applicant's actions were deliberate and fraudulent. They show a blatant disregard for Australian immigration laws and the Tribunal gives this factor significant weight in favour of exercising its discretion to cancel the visa.

The present circumstances of the visa holder

44. The applicant's representative submitted the applicant and his family have lived in Australia for 10 years and established significant social, educational and community links. They have sold their property in China and bought a house in Australia so it would be difficult for them to re-establish a home in China. The applicant would have to sell his house in a hurry and incur a great financial loss. His employer greatly values his contribution and he is considered a highly skilled worker.
45. The applicant expressed that he is regretful in his statutory declaration dated 12 February 2022. He says his son's education and future would be ruined for which he would be liable and sorry for the rest of his life.
46. The applicant told the Tribunal he has been employed as a welder by MPI Global Pty Ltd since 2016. He lives with his wife and son in the home they purchased for about \$400,000, now valued at around \$500,000 and has a mortgage of around \$100,000. His father and brother remain in China. His wife injured her knee and it is still painful when she squats or kneels, but otherwise the family enjoy good health. His wife and son are employed and they all pay their taxes.

47. The Tribunal received letters of support and statutory declarations from the management team of MPI Global Pty Ltd. Lindsay McEwen, the WA Operations Manager, declared the applicant has been employed since 2016. The applicant has developed skills in the manufacture of component parts beyond others employed by the company and is therefore irreplaceable. The business will suffer great economic loss if they have to find a replacement while there is a severe workforce shortage.
48. Mr McEwen's comments of the applicant's character, work attributes, quality of his work and dedication to his employer and the community are echoed in the letters and statutory declarations of Daniel Draffin, Director; John Draffin, founding Director; Edward Draffin, Business Development; Brandon Skinner, Workshop Foreman/Production Manager; Craig Henderson, Purchasing Manager/Procurement, Logistics and Systems Manager; Saiden Adeinia, Draftsperson; Giuseppe Impicciatore, Despatch Manager; and Timothy Anderson, Sales and Distribution. The Tribunal accepts the applicant is highly regarded by his employer, and the employer would suffer some inconvenience and financial cost if it was required to find and train a replacement.
49. David and Brenda Mycock, Vincent Ho and Harry Deacon provided letters of support and statutory declarations detailing the community deeds performed by the applicant and his family. The Tribunal accepts the applicant and his wife and son are community minded, friendly and good neighbours.
50. The Tribunal has considered the present circumstances of the applicant as follows.
51. The Tribunal accepts that the applicant and his family have resided in Australia for over 9 years. The applicant and his spouse have purchased a property in Australia and the Tribunal accepts that they have no assets in China. The Tribunal gives some favourable weight to the fact that the applicant has assets, and hence financial ties, in Australia.
52. The Tribunal also considers that the applicant and his spouse could sell their property in Australia and after repaying their outstanding mortgage would have a substantial amount (approximately \$400,000) if they sold it at the estimated value of \$500,000. The Tribunal considers that the applicant and his family could rely on these funds to re-establish themselves in China.
53. The Tribunal also accepts that the applicant and his family have developed social and community ties with neighbours and their respective workplaces. While the Tribunal gives some favourable weight to the applicant's social ties in Australia, it also notes that the applicant and his spouse have family in China, including his father and brother.
54. In relation to the applicant's employment, the Tribunal acknowledges that the applicant is employed by a business that values him. The Tribunal accepts that the applicant is a skilled welder who has developed specific skills and that replacing him would be difficult and may cause an economic loss for the business. While the employer may be inconvenienced and may experience some financial loss if it could not maintain the applicant's employment, the Tribunal considers that this would be limited. The Tribunal has formed the view that the business, given its size and employment of other welders, would be able to make alternative arrangements for manufacture of goods until a replacement could be found.
55. The Tribunal acknowledges the applicant's concern about re-establishing his family in China and that his son was 14 when he arrived and has been educated and works in Australia. The Tribunal considers however that the applicant, who is 49 years of age, still has many working years left. While the Tribunal acknowledges the difficulties that the applicant may initially encounter in securing employment upon returning to China, the Tribunal considers that the applicant's extensive experience as a welder in China and Australia would stand him in good

stead to secure suitable employment in China. The Tribunal does not discount the challenges and difficulties, including the financial and emotional hardship, that the applicant and his family would encounter upon their return to China. The Tribunal acknowledges that the applicant prefers to live in Australia where he is employed and has established a social network.

56. In considering the applicant's present circumstances, the Tribunal accepts the social and financial impact on his son who has spent a large proportion of his life in Australia, and also many aspects of the applicant's other circumstances, including his financial ties, current employment and social ties, which weigh in favour of not cancelling the visa.

The subsequent behaviour of the visa holder concerning his or her obligations under Subdivision C of Division 3 of Part 2 of the Act

57. The applicant was under obligation, as required by s 105 of the Act, to correct the incorrect information provided in the visa application form and an incorrect response under s 107 as soon as practicable. Section 107(2) required the applicant, if responding to the NOICC, to do so without making an incorrect statement.
58. The Tribunal asked the applicant to explain his response to the NOICC on 30 April 2021 that appeared to indicate the photographs were of him and only different due to weight, stress or age changes and that he took the IELTS exam. The Tribunal noted the information was inconsistent with his admission in his statutory declaration dated 12 February 2022 that he provided an incorrect answer and a bogus document in favour of his visa application. The applicant said the first time he declared the correct information was on 12 February 2022 and expressed that he was regretful.
59. The applicant was on notice that it appeared to the Department he may have provided incorrect information on his visa application when the NOICC was sent to him on 20 April 2021. The applicant did not correct the information on his visa application. On the contrary the applicant claimed the photographs were different because of age, stress or weight and that he sat the IELTS test. Despite being represented by a registered migration agent since making his application to the Tribunal on 13 August 2021, the applicant made no attempt to correct the information on his visa application or the incorrect response given by him in response to the s 107 notice until 12 February 2022. The Tribunal acknowledges the applicant's expression of regret.
60. The Tribunal is not satisfied the applicant made any effort to comply with his obligations under Subdivision C of Division 3 of Part 2 of the Act to correct incorrect responses as soon as practicable.
61. The Tribunal considers this a significant factor weighing in favour of cancelling the visa.

Any other instances of non-compliance by the visa holder known to the Minister

62. The Tribunal notes the delegate's finding that there was no evidence of any other non-compliance by the applicant known to the Department. Aside from the non-compliance already addressed, the Tribunal notes that there is no other evidence before the Tribunal. It therefore accords this factor some weight in favour of not cancelling the applicant's visa.

The time that has elapsed since the non-compliance

63. The Tribunal accepts that it is now approximately 6 years since the applicant was granted his Subclass 187 visa on the (incorrect) basis that he had competent English. The Tribunal

considers that this is a reasonably significant period. It therefore accords this factor some weight in favour of not cancelling his visa.

64. The Tribunal accepts that there have been no other known instances of non-compliance by the applicant and gives this factor some weight in favour of its discretion to not cancel the visa.

Any contribution made by the visa holder to the community

65. The Tribunal accepts that the applicant has involved himself in some community activities, and that he has done things to assist others, such as donating blood, purchasing masks for use by others during the Covid-19 pandemic, and generally helping when he can. The Tribunal accepts the applicant has contributed to the community through his employment in a skilled trade in WA, and the consequential financial benefit to his employer. The Tribunal accords this some weight in favour of not cancelling his visa.

Other circumstances

66. While the above factors must be considered, they do not represent an exhaustive statement of the circumstances that might properly be considered to be relevant in any given case: *MIAC v Khadgi* (2010) 190 FCR 248. The Tribunal may also have regard to lawful government policy. The relevant policy is set out in the Department's Procedures Advice Manual (PAM3) 'General visa cancellation powers', which refers to matters such as the consequences of cancelling the visa, international obligations and any other relevant matters.
67. The Tribunal has considered whether there are mandatory legal consequences, such as whether cancellation would result in the visa holder being unlawful and subject to detention, or whether indefinite detention is a possible consequence of cancellation, or whether there are provisions in the Act which prevent the person from making a valid visa application without the Minister's intervention.
68. The cancellation of the applicant's visa would result in the applicant being unlawful and subject to detention only in circumstances where the applicant does not apply for another visa to remain lawfully in Australia or does not depart Australia before any visa held by him ceases. The Tribunal acknowledges that due to the circumstances of Covid-19 and restrictions placed on international travel, that the applicant and members of his family may not be able to depart Australia for some time. The Tribunal notes however that in the circumstances the applicant and his family would be able to apply for bridging E visas which, if granted, would enable them to remain lawfully in Australia until such time they are able to depart.
69. The Tribunal also notes that if the applicant's visa is cancelled, he would be affected by s 48 of the Act and would not be able to make a valid application for a substantive visa in Australia, other than the limited types prescribed in reg 2.12 of the Regulations, such as protection and partner visas.
70. The Tribunal considers that any adverse consequences of cancellation, as discussed above, are intended by the legislation and accordingly gives this consideration limited weight in favour of not cancelling the visa.
71. The Tribunal is not satisfied that the visa cancellation would lead to the breach of any of Australia's international obligations.

72. The applicant's representative submits other factors to consider are the mental and psychological stresses on the family; the financial loss of a rushed sale of their house; and the adverse effect on the applicant's employer.
73. The Tribunal accepts that the applicant and his family members may be stressed due to the visa cancellation and appreciates that they would prefer to remain in Australia. There is no evidence of any medical conditions affecting the family that might be exacerbated by the stress. The Tribunal does not agree with the applicant's representative's submission he deserves credit for his honesty and bravery of telling the truth. The applicant gave incorrect information and a bogus document to obtain a migration advantage and was not forthcoming when invited to address the Department's concerns. The applicant's conduct went to the core of his entitlement to the visa and to the integrity of Australia's visa system generally. The Tribunal is not satisfied that the applicant, or his family, will suffer serious disadvantage if his visa is cancelled and they are obliged to return to China.
74. The Tribunal also acknowledges the difficulties and the hardship the applicant's son may experience if his father's visa is cancelled and he has to return to China and adjust to life there. The Tribunal gives some weight to the emotional hardship that may be experienced by the applicant's son if he had to return and readjust to life in China, given he has spent most of his teenage years in Australia where he has formed friendships and has secured employment. There is no evidence before the Tribunal that the applicant's son was complicit in his father's wrongdoing. The Tribunal accepts he is an innocent victim of his father's non-compliance. The hardship that may be experienced by the applicant's son if his visa is consequentially cancelled weighs in favour of not cancelling the visa.
75. The Tribunal has also considered the hardship that may be experienced by MPI Global Pty Ltd and the disruption that may occur to its business if it could not maintain the employment of the applicant. The Tribunal, however, gives limited weight to this hardship because the Tribunal does not consider it an uncommon occurrence for a small business to lose a valuable employee.
76. In considering whether the visa should be cancelled, the Tribunal has carefully weighed up all the relevant circumstances. In this case, there are circumstances that weigh in favour of not cancelling the visa, such as the applicant's employment in an in-demand occupation, his family, employment and financial ties to Australia and the emotional and financial hardship that may be experienced by the applicant's spouse and son, who were not involved in any wrongdoing.
77. The representative referred the Tribunal to the case of *HU (Migration)* [2021] AATA 2941 (8 June 2021) as an exactly relevant case. The representative acknowledged the Tribunal (differently constituted) set that decision aside considering the welfare and best interests of the applicant's Australian citizen minor child. The Tribunal observes the interests of an Australian citizen minor is not affected in the present case. The Tribunal does not consider the case in any way analogous or relevant to the matter before it.
78. Against the above however are circumstances which weigh strongly in favour of cancellation, with the most significant of these being the fact that the applicant would not have been entitled to the grant of the employer sponsored visa had the Department known that an imposter, and not the applicant, had sat the English language test and achieved the scores that the applicant relied upon in his application for the visa. The applicant's conduct in providing incorrect information and a bogus document to secure a permanent visa was deliberately deceptive and seriously undermined the integrity of Australia's migration program. For these reasons, the Tribunal considers that the visa should be cancelled.

79. The Tribunal has decided that there was non-compliance by the applicant in the way described in the notice given under s 107 of the Act. Further, having regard to all the relevant circumstances, as discussed above, the Tribunal concludes that the visa should be cancelled.

DECISION

80. The Tribunal affirms the decision to cancel the first named applicant's Subclass 187 – Regional Sponsored Migration Scheme visa.
81. The Tribunal has no jurisdiction with respect to the other applicants.

P. Maishman
Member

ATTACHMENT – *Migration Act 1958* (extracts)

5 Interpretation

- (1) In this Act, unless the contrary intention appears:
- bogus document**, in relation to a person, means a document that the Minister reasonably suspects is a document that:
- (a) purports to have been, but was not, issued in respect of the person; or
 - (b) is counterfeit or has been altered by a person who does not have authority to do so; or
 - (c) was obtained because of a false or misleading statement, whether or not made knowingly.

97 Interpretation

In this Subdivision:

application form, in relation to a non-citizen, means a form on which a non-citizen applies for a visa, being a form that regulations made for the purposes of section 46 allow to be used for making the application.

passenger card has the meaning given by subsection 506(2) and, for the purposes of section 115, includes any document provided for by regulations under paragraph 504(1)(c).

Note: **Bogus document** is defined in subsection 5(1).

98 Completion of visa application

A non-citizen who does not fill in his or her application form or passenger card is taken to do so if he or she causes it to be filled in or if it is otherwise filled in on his or her behalf.

99 Information is answer

Any information that a non-citizen gives or provides, causes to be given or provided, or that is given or provided on his or her behalf, to the Minister, an officer, an authorised system, a person or the Tribunal, or the Immigration Assessment authority, reviewing a decision under this Act in relation to the non-citizen's application for a visa is taken for the purposes of section 100, paragraphs 101(b) and 102(b) and sections 104 and 105 to be an answer to a question in the non-citizen's application form, whether the information is given or provided orally or in writing and whether at an interview or otherwise.

100 Incorrect answers

For the purposes of this Subdivision, an answer to a question is incorrect even though the person who gave or provided the answer, or caused the answer to be given or provided, did not know that it was incorrect.

101 Visa applications to be correct

A non-citizen must fill in or complete his or her application form in such a way that:

- (a) all questions on it are answered; and
- (b) no incorrect answers are given or provided.

103 Bogus documents not to be given etc.

A non-citizen must not give, present, [produce]* or provide to an officer, an authorised system, the Minister, the Immigration Assessment Authority, or the Tribunal performing a function or purpose under this Act, a bogus document or cause such a document to be so given, presented, [produced]¹ or provided.

107 Notice of incorrect applications

- (1) If the Minister considers that the holder of a visa who has been immigration cleared (whether or not because of that visa) did not comply with section 101, 102, 103, 104 or 105 or with subsection (2) in a response to a notice under this section, the Minister may give the holder a notice:
- (a) giving particulars of the possible non-compliance; and
 - (b) stating that, within a period stated in the notice as mentioned in subsection (1A), the holder may give the Minister a written response to the notice that:
 - (i) if the holder disputes that there was non-compliance:
 - (A) shows that there was compliance; and

*This wording applies to documents given, presented, produced or provided on or after 4 November 2014: Schedule 7 to *Counter Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (No.116, 2014).

¹

- (B) in case the Minister decides under section 108 that, in spite of the statement under sub-subparagraph (A), there was non-compliance—shows cause why the visa should not be cancelled; or
 - (ii) if the holder accepts that there was non-compliance:
 - (A) give reasons for the non-compliance; and
 - (B) shows cause why the visa should not be cancelled; and
- (c) stating that the Minister will consider cancelling the visa:
 - (i) if the holder gives the Minister oral or written notice, within the period stated as mentioned in subsection (1A), that he or she will not give a written response—when that notice is given; or
 - (ii) if the holder gives the Minister a written response within that period—when the response is given; or
 - (iii) otherwise—at the end of that period; and
- (d) setting out the effect of sections 108, 109, 111 and 112; and
- (e) informing the holder that the holder's obligations under section 104 or 105 are not affected by the notice under this section; and
- (f) requiring the holder:
 - (i) to tell the Minister the address at which the holder is living; and
 - (ii) if the holder changes that address before the Minister notifies the holder of the Minister's decision on whether there was non-compliance by the holder—to tell the Minister the changed address.
- (1A) The period to be stated in the notice under subsection (1) must be:
 - (a) in respect of the holder of a temporary visa—the period prescribed by the regulations or, if no period is prescribed, a reasonable period; or
 - (b) otherwise—14 days.
- (1B) Regulations prescribing a period for the purposes of paragraph (1A)(a) may prescribe different periods and state when a particular period is to apply, which, without limiting the generality of the power, may be to:
 - (a) visas of a stated class; or
 - (b) visa holders in stated circumstances; or
 - (c) visa holders in a stated class of people (who may be visa holders in a particular place); or
 - (d) visa holders in a stated class of people (who may be visa holders in a particular place) in stated circumstances.
- (2) If the visa holder responds to the notice, he or she must do so without making any incorrect statement.

108 Decision about non-compliance

The Minister is to:

- (a) consider any response given by a visa holder in the way required by paragraph 107(1)(b); and
- (b) decide whether there was non-compliance by the visa holder in the way described in the notice.

109 Cancellation of visa if information incorrect

- (1) The Minister, after:
 - (a) deciding under section 108 that there was non-compliance by the holder of a visa; and
 - (b) considering any response to the notice about the non-compliance given in a way required by paragraph 107(1)(b); and
 - (c) having regard to any prescribed circumstances;
 may cancel the visa.
- (2) If the Minister may cancel a visa under subsection (1), the Minister must do so if there exist circumstances declared by the regulations to be circumstances in which a visa must be cancelled.